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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/418,902	10/15/1999	WALTER V. KLEMP	P01896US0	9464

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EXAMINER
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KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/418,902

Applicant(s)

KLEMP ET AL. *CN*

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/6/02.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 54-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 54-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 18, 54 – 60 and 68 – 72 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a pair of end strips fixed intermediate the topsheet, does not reasonably provide enablement for a pair of end strips fixed intermediate the core. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

Regarding claim 1, the applicant claims that the pair of end strips is fixed intermediate the core and one of the end edges. However, it is unclear how the end strips can be fixed intermediate the core when the core is enclosed by the topsheet as shown in figures 3 – 4 and supported by the originally filed specification.

Regarding claim 54, the applicant claims that the pair of side walls extends between the core and one of the side edges. It is unclear how the side walls can extend between the core when the core is enclosed by the topsheet as shown in figures 3 – 4 and supported by the originally filed specification.

Claims 54 – 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claim 54 recites an end strip secured to each one of the front and back waist sections (line 14). The claim continues to recite the specifics of the end strip. However, in lines 19 – 20, the claim states that the waist section of the end strip forms an elastic waistband on one of the front and back waist regions, not each one of the front and back waist regions as previously claimed. Correction and/or clarification are required.

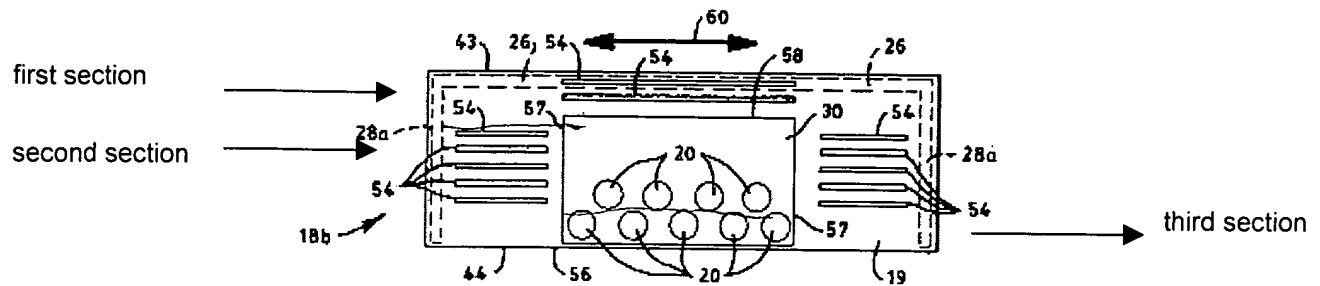
### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 18 and 54 – 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al. (US 6,135,988).

With respect to claim 1, Turner et al (hereinafter referred to as Turner), teaches a disposable absorbent article having side and end edges (10), a topsheet layer (12), a backsheet layer (14), an absorbent core (16), and an end strip (18, 19) as shown below:



Turner discloses the first section having generally elastic properties (col. 9, lines 42 – 43) and laterally extending in generally parallel relation with the end edges (figure 1), and the second section can be understood to be substantially less elastic than the first section since the second section includes apertures (page 11 of the applicant's specification). Likewise, the second section extends in generally parallel relation therewith (figure 1). Additionally, Turner teaches the third section being spaced away from the topsheet and core as set forth in col. 4, lines 65 – 66. Further, Turner discloses each section of the end strip to be distinctly elastic (col. 9, lines 42 – 43) and distinctly positioned relative to said other sections (i.e., the apertured section is different from section with the elastic strands and the surrounding areas).

The difference between Turner and claim 1 is the provision that the absorbent article include a pair of end strips.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Turner to provide a second end strip since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art.

As to claim 2, Turner teaches the second section to be formed from elastic (col. 9, lines 42 – 43) and having at least one void (figure 5).

Regarding claim 3, Turner discloses the first and second sections being secured to the topsheet in col. 4, lines 37 – 40.

With reference to claims 4, 8 and 10, Turner shows the end strip to be formed from elastic material in col. 9, lines 42 – 43.

As to claim 5, Turner discloses the second section with a plurality of voids in figure 5.

With respect to claim 6, Turner teaches the first section to form a waistband portion in figure 3.

Regarding claim 7, Turner discloses the first section fixed along one of said end edges in figure 3.

With reference to claim 9, Turner shows the article with the third section including side portions, a pair of side walls (64), and each side portion of the third section being secured to one of the end portions of the side wall structure with an intermediate portion of each side wall being biased generally upward in figure 6.

With respect to claim 11, Turner teaches the article with a containment pocket having a depth dimension (col. 5, lines 19 – 22), and being bound by a substantially continuous wall being defined by the third sections of the end strip (figure 6).

With reference to claims 12 – 13, 60, 62 and 67, Turner has disclosed a pocket being formed in col. 4, line 65 to col. 5, line 7. This pocket would obviously provide a depth dimension as claimed by the applicant. It would be obvious to one of ordinary

skill in the art to adjust the depth measurement in order to arrive at the claimed invention through the use of mere routine experimentation and observation.

As to claim 14, Turner discloses the article wherein an intermediate portion of each of the side edges extending generally parallel with the core is upwardly biased in figure 6.

With reference to claim 15, Turner teaches the wall structure to include a portion of the topsheet at least one elastic member in col. 12, lines 36 – 40 and figure 6).

Regarding claim 16, Turner shows the first and second sections fixed to the topsheet (col. 4, lines 38 – 40), the third section extending upwardly (col. 4, line 65, figure 6) and the first and third sections being elastic (col. 9, lines 42 – 43) with the second section substantially inelastic (figure 5 and the rejection of claim 1).

As to claim 17, Turner discloses a front waist region (32), a back waist region (34), a crotch region (36), the core being disposed in the crotch region (16), an ear region (figure 3), and an end strip extending laterally into two of said ear regions (figure 3).

With respect to claim 18, Turner provides an end strip constructed from elastic material (col. 9, lines 42 – 43) being secured to the topsheet (col. 4, lines 38 – 40), which would in turn serve to provide tension in the waist region.

With respect to claims 54 – 59, Turner teaches an article meeting all of the limitations of the claims as previously addressed in the rejection of claims 1 – 18 with the fixed waist section being represented by the first and second sections and the elastic inward section being represented by the third section.

With reference to claim 61, Turner discloses an article meeting all of the limitations of the claim as previously addressed in the rejection of claims 1 – 18 with the elastic end section being represented by the first section, the substantially non-elastic intermediate section being represented by the second section, and the elastic inward section being represented by the third section.

Regarding claims 63 – 66, Turner teaches an article meeting all of the limitations of the claim as previously addressed in the rejection of claims 1 – 18 with a pair of tensioned regions being recited as waist elastics in col. 12, lines 48 – 50.

With reference to claims 68 – 69 and 71, see figure 5.

Regarding claims 70 and 72, the absence of a critical teaching and/or unexpected results leads the examiner to believe that the claimed limitations would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art invention.

### ***Response to Arguments***

Applicant's arguments filed February 28, 2002 have been fully considered but they are not persuasive.

The applicant argues that Turner does not teach or suggest three distinct sections as recited in claim 1. The examiner disagrees and refers to the rejection of claim 1. Turner discloses three distinct sections as set forth in figure 5. The apertured section provides one distinct section with the sections on either side of the apertured side being distinct as well.



With respect to the applicant's argument that "Turner does not teach or suggest such a combination of three sections wherein the first elastic section has generally elastic properties, and wherein a second elastic section is substantially more elastic than the second section," it is noted that the features upon which applicant relies are not recited in the rejected claims. The examiner notes that this argument is unclear. The applicant has claimed that the second section is substantially more elastic than the second section, but the claim actually recites that the first section is substantially more elastic than the second section. In spite of this, the examiner refers to the page 11 of the applicant's specification which states that the plurality of apertures de-elasticize the immediate area adjacent the apertures. Therefore, the examiner contends that the apertures of Turner will function similarly by de-elasticizing the area around the apertures thereby providing a second section that is substantially less elastic than a first section.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the location of the elastic on the flap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant claims three elastic sections. The flap disclosed by Turner is comprised of an elastic material (col. 9, lines 42 – 53) thereby rendering the flap elastic. The fact that the middle of the flap comprises apertures renders that section (i.e., the

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second section) of the flap less elastic than the first section (i.e. the section to the left of the apertured section) thereby meeting all of the claimed limitations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
April 8, 2003

  
WEILUN LO  
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